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09/602,537	06/23/2000	Eric Teller	1148/016	9554

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EXAMINER

ASTORINO, MICHAEL C

ART UNIT PAPER NUMBER

3736

DATE MAILED: 09/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/602,537

Applicant(s)

TELLER ET AL.

Examiner

Michael C. Astorino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-137 is/are pending in the application.
- 4a) Of the above claim(s) 11, 12, 34, 35, 45-94, 119, 122, 123, 126, 127, 129-137 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13-33, 36-44, 95-118, 120, 121, 124, 125 and 128 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5-7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-44, 95-125 and 128, drawn to a system for detecting, monitoring and reporting physiological information, classified in class 600, subclass 300.
- II. Claims 45-94 and 126-127, drawn to monitoring the degree to which an individual has followed a suggested routine, classified in class 482, subclass 8.
- III. Claims 129-137, drawn to a system for detecting and monitoring human physiological information with a rely unit, classified in class 455, subclass 7.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, Invention I has separate utility such as monitoring motion, galvanic skin response, or heat flow; Invention II has a separate utility such as following as monitoring a suggested routine; and Invention III has separate utility such as detecting information from a sensor device and using a relying unit to communicate the data. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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(flexible wing design as shown in figures 12-18), claims 1-10, 13-33, 36-44, 95-118, 120-121, 124-125 and 128. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-12, 34-35, 45-94, 119, 122-123, 126-127, and 129-137 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### *Specification*

Applicant is reminded of the proper language and format for an abstract of the disclosure. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of **50 to 150 words**. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

This application contains claims directed to the following patentably distinct species of the claimed invention:

Invention I

- a. Flexible wing design as shown in figures 12-18
- b. Web site design shown in figures 5-11
- c. Rechargeable battery housing design shown in figure 19

Invention II

- a. Flexible wing design as shown in figures 12-18
- b. Web site design shown in figures 5-11
- c. Rechargeable battery housing design shown in figure 19

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-10, 13-21, 32-33, 36-44, and 124-125 are generic to Invention I, and claims 45-52, 57-61, 63-66, 77-78, 81-94, 126-127 are generic to Invention II.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

During a telephone conversation with Philip Levy on August 27, 2002 a provisional election was made without traverse to prosecute Invention I – species a

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The use of the trademarks have been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### *Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 38 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 38 recites that the sensor device worn on said arm. This recites a positive relationship to the human body. However, the human body is non-statutory subject matter and cannot be positively recited. Therefore, applicant should amend the claim to recite that the sensor device adapted to worn on said arm.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

- (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-10, 13-22, 25-33, 36-39, 42, 95-98, 102-110, 113-118, 120-121, 124-125 and 128 are rejected under 35 U.S.C. 102(e) as being anticipated by Jacobsen et al. (6,198,394 B1).

Jacobsen et al. discloses two sensor systems (14, 18) with numerous sensors including temperature, heart rate, breathing rate sensors and an accelerometer (100) for detecting hypothermia, and arm mounted unit (200) affixed by a strap (216), a display (204), to a central monitor (338) a third party wireless station (400), a relay device (530), and a memory unit (349).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-24, 40-41, 43-44, 99-100, and 111-112 rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobsen et al.

Although not specifically disclosed in Jacobsen et al., GSR sensor(s) for skin conductance (via electrodes) and heat flux sensors (via thermopiles) are two of many physiological type sensors that are well known in the art, any of which can be substituted for the various types of physiological sensors disclosed in Jacobsen et al. because the

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system is setup to find out physiological information about soldiers, fireman, etc. in regards to their welfare and safety.

### *Conclusion*


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lester ('831), Ortega ('865), Chen ('766), and Courtney et al. ('647).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C Astorino whose telephone number is 703-306-9067. The examiner can normally be reached on Monday-Thursday, 10:00AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0758 for regular communications and 703-308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5648.

MA  
August 27, 2002

  
KEVIN SHAVER 8/27/02  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700